

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4528 of 2015
and M.P.No.1 of 2015

T.Thirukumaran

.. Petitioner/Defendant

Vs.

Govindarajulu Naidu

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 31.07.2015 in I.A.No.162 of 2014 in O.S.No.213 of 2007 on the file of the III Additional District Munsif Court, Villupuram District.

For Petitioner :Mr.R.Saseetharan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 31.07.2015 in I.A.No.162 of 2014 in O.S.No.213 of 2007 on the file of the III Additional District Munsif Court, Villupuram District.

2.At the time of admission, argument of the learned counsel for the revision petitioner is heard in length.

3.The respondent herein as a plaintiff filed a suit in O.S.No.213 of 2007 for declaration of title and injunction against one Tirunavukkarasu. Since he died, his legal heirs were impleaded as D2 to D4. When D.W.1 was in witness box, during his cross-examination, the revision petitioner/3rd defendant has filed an application in I.A.No.162 of 2014 under Order 26 Rule 9 of C.P.C. for appointment of Advocate commissioner. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the defendant.

4.Learned counsel for the revision petitioner submits that appointment of Advocate Commissioner is necessary to prove that the defendants are in possession of the suit property. But the trial Court has dismissed the application on the ground that the application has been filed only for collection of material evidence. Further, the trial Court has held that after the death of the first defendant/Tirunavukkarasu, his legal heirs were impleaded as D2 to D4, they filed additional written statement, which was dismissed

stating that mutual destructive plea has been taken, against which, C.R.P.(PD) No.103 of 2010 has been filed and the same was dismissed. To circumvent the same, the present application has been filed. But the trial Court failed to consider that the first defendant herein purchased the property on 07.04.2007 and that he was in possession and enjoyment of the same. Hence, he prayed for allowing the revision petition.

5.On perusal of the typed set of papers, it reveals that the respondent herein as a plaintiff filed a suit against one Tirunavukkarasu for declaration of title and injunction on the basis of the settlement deed dated 19.06.1914, 22.01.1938, 11.01.1954 and the partition deed dated 24.11.1980. The said Tirunavukkarasu has put forth his case by filing written statement stating that he purchased the property from one Duraisamy Naidu, who is the son of Bethu Naidu.

6.During pendency of the suit, the first defendant/Tirunavukkarasu died and his legal heirs were impleaded as D2 to D4. They filed additional written statement, which was rejected by the trial Court, against the same, C.R.P.(PD)No.103 of

2010 has been preferred. That C.R.P. was dismissed by confirming the order passed by the trial Court.

7. Now the point to be decided is that whether appointment of Advocate Commissioner is necessary? On perusal of para-13 to 15 of the affidavit filed in support of the application shows that to prove that the defendants are in possession and enjoyment of the suit property, appointment of Advocate Commissioner is necessary.

8. It is well settled dictum of the Apex Court that Advocate Commissioner cannot be appointed for collecting material evidence. It is the duty of the plaintiff to prove that he is in possession and enjoyment of the property that too legal possession. In the case on hand, the third defendant has come forward with the application only on the basis of the sale deed executed in favour of his father.

9. Considering the facts and circumstances of the case, I am of the view, the trial Court has correctly held that appointment of Advocate Commissioner is only for collection of material evidence and dismissed the application. So the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed.

10. In fine, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.12.2015

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Index: Yes/No

To

The III Additional District Munsif Court,
Villupuram District.

R.MALA,J.

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